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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/621,085	07/21/2000	Andreas Kruger	042933/300242	4806
826	7590	10/28/2008	EXAMINER	
ALSTON & BIRD LLP			MILLER, BRANDON J	
BANK OF AMERICA PLAZA				
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CHARLOTTE, NC 28280-4000			2617	
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			10/28/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/621,085	KRUGER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BRANDON J. MILLER	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 July 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-28 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 9-28 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 21 July 2000 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1.) Certified copies of the priority documents have been received.  
 2.) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Response to Amendment/Remarks***

#### ***Disposition of Claims***

I. Claims 9-28 are presently pending in the application.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

II. Claims 9-10 and 25-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 9-10 and 25-27 contain the added limitation of an “operable device with at least two operating states that may be produced or changed independently from each other”. The above limitation was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The above limitation first appears in claims 9-10 and 25-27 of this amendment dated 7/15/2008. However, because the amendment adding this limitation was over seven years after the 7/21/2000 filing date of the application and the limitation is not

recited or suggested anywhere else in the application as filed, the amendment constitutes new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

III. Claims 9, 25-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites “blocks or releases the existing operating states of the operable device according to whether an actual driving situation is dangerous or non-dangerous on a basis of the driving profile” in lines 11-13. This limitation does not adequately describe what “on a basis of the driving profile” refers to. It is unclear as to whether “on a basis of the driving profile” refers to blocks or releases the existing operating states of the operable device; or whether an actual driving situation is dangerous or non-dangerous; or both. This limitation renders the claim indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 25-26 contain a limitation similar to the one recited above in claim 9 and are rejected given the same reasoning as above.

The following art rejection is based on the best possible interpretation of the claim language in light of the rejections under 35 U.S.C. 112, first paragraph and second paragraphs.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

IV. Claims 10, 12, 14, 16, 18, 20, 22, 24, and 27-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Hardouin (US 6,311,078 B1).

Regarding claim 10 Hardouin teaches a system comprising at least one operable device with at least two operation states that may be produced or changed independently from each other to be used in a vehicle (see col. 1, lines 57-67 and col. 2, lines 11-15). Hardouin teaches an operating panel through which a user can cause at least one of producing existing operating states or changing existing operating states of the operable device (see col. 1, lines 57-67). Hardouin teaches at least one sensor in the vehicle (see col. 2, lines 12-15). Hardouin teaches a decision unit, coupled to the operating panel, which receives driving speed data from the at least one sensor for determining vehicle-specific conditions by measuring fluctuation of the driving speed of the vehicle over a time period and blocks are released the existing operating states of the operable device based on the measured fluctuation (see col. 2, lines 11-15, 17-20, 29-38).

Regarding claim 12 Hardouin teaches wherein the operable device is operable to perform at least one of receiving and transmitting data (see col. 1, lines 58-67).

Regarding claim 14 Hardouin teaches equipment which collects information on at least one of conditions or states under which or by which the operable device is currently being operated, and transmits the information as data to a decision unit (see col. 2, lines 4-5).

Regarding claim 16 Hardouin and Hahn teach a device as recited in claim 14 and is rejected given the same reasoning as above.

Regarding claim 18 Hardouin teaches an operable device comprising a receiving unit, wherein data is received by a receiving unit and is transmitted to a decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating state of an operable device (see col. 2, lines 11-15, 17-20, 29-32).

Regarding claim 20 Hardouin and Hahn teach a device as recited in claim 18 and is rejected given the same reasoning as above.

Regarding claim 22 Hardouin and Hahn teach a device as recited in claim 18 and is rejected given the same reasoning as above.

Regarding claim 24 Hardouin and Hahn teach a device as recited in claim 18 and is rejected given the same reasoning as above.

Regarding claim 27 Hardouin teaches an apparatus configured to be coupled to an operating panel of an operable device in a vehicle with at least two operation states that may be produced or changed independently from each other to be used in a vehicle (see col. 1, lines 57-67 and col. 2, lines 11-15). Hardouin teaches a decision unit configured to receive driving speed data from at least sensor present in the vehicle (see col. 2, lines 11-15). Hardouin teaches a decision configured to determine vehicle-specific conditions by measuring fluctuation of the

driving speed over a time period and blocks are releases the existing operating states of the operable device based on the measured fluctuation (see col. 2, lines 11-15, 17-20, 29-38).

Regarding claim 28 Hardouin teaches an output signal, which is used for changing the operating states of the operable device connected to the decision unit (see col. 2, lines 17-24 & 29-32

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

V. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1,148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- VI. Claims 9, 11, 13, 15, 17, 19, 21, 23, and 25-26 are rejected under 35 U.S.C.

103(a) as being unpatentable over Hardouin (US 6,311,078 B1) in view of Hahn et al. (US 6,188,949 B1).

Regarding claim 9 Hardouin teaches a system comprising at least one operable device with at least two operating states that may be produced or changed independently from each other to be used in a vehicle (see col. 1, lines 57-67 and col. 2, lines 11-15). Hardouin teaches an operating panel through which a user can cause at least one of producing existing operating states or changing existing operating states of the operable device (see col. 1, lines 57-67).

Hardouin teaches at least one sensor in the vehicle (see col. 2, lines 12-15). Hardouin teaches a decision unit, coupled to the operating panel of the operable device, which receives data from said at least one sensor for determining a vehicle-specific condition over a time period of vehicle operation by evaluating the received sensor data indicating an actual driving situation of the vehicle; and blocks or releases the existing operating states of the operable device according to whether an actual driving situation is dangerous or non-dangerous on a basis of the data (see col. 2, lines 11-15, 17-20, 29-32, actual speed being above or below predefined speed corresponds to actual driving situation being dangerous or non-dangerous respectively (see col. 1, lines 10-11)).

Hardouin does not specifically teach converting the vehicle-specific conditions into a driving profile. Hahn teaches converting vehicle-specific conditions into a driving profile (see col. 5, lines 35-41, col. 6, lines 23-25 and col. 7, lines 55-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device in Hardouin adapt

to include converting the vehicle-specific conditions into a driving profile as taught in Hahn because the received data in Hardouin can be stored in the memory device of Hardouin in the same way that the data is received and stored in Hahn to create the driving profile.

Regarding claim 11 Hardouin teaches wherein the operable device is operable to perform at least one of receiving and transmitting data (see col. 1, lines 58-67).

Regarding claim 13 Hardouin teaches equipment which collects information on at least one of conditions or states under which or by which the operable device is currently being operated, and transmits the information as data to a decision unit (see col. 2, lines 4-5).

Regarding claim 15 Hardouin and Hahn teach a device as recited in claim 13 and is rejected given the same reasoning as above.

Regarding claim 17 Hardouin teaches an operable device comprising a receiving unit, wherein data is received by a receiving unit and is transmitted to a decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating state of an operable device (see col. 2, lines 11-15, 17-20, 29-32).

Regarding claim 19 Hardouin and Hahn teach a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 21 Hardouin and Hahn teach a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 23 Hardouin and Hahn teach a device as recited in claim 17 and is rejected given the same reasoning as above.

Regarding claim 25 Hardouin teaches a method for controlling at least one operable device with at least two operating states that may be produced or changed independently from

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each other to be used in a vehicle (see col. 1, lines 57-67 and col. 2, lines 11-15). Hardouin teaches controlling an operating panel by a user can cause at least one of producing existing operating states or changing existing operating states of the operable device (see col. 1, lines 57-67). Hardouin teaches receiving data from at least one sensor in a decision unit which is coupled to the operating panel; determining vehicle-specific conditions over a time period of vehicle operation by evaluating the sensor data indicating an actual driving situation of the vehicle; and blocking or releasing the existing operating states of the operable device according to whether an actual driving situation is dangerous or non-dangerous on a basis of the data (see col. 2, lines 11-15, 17-20, 29-32, actual speed being above or below predefined speed corresponds to actual driving situation being dangerous or non-dangerous respectively (see col. 1, lines 10-11)).

Hardouin does not specifically teach converting the vehicle-specific conditions into a driving profile. Hahn teaches converting vehicle-specific conditions into a driving profile (see col. 5, lines 35-41, col. 6, lines 23-25 and col. 7, lines 55-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device in Hardouin adapt to include converting the vehicle-specific conditions into a driving profile as taught in Hahn because the received data in Hardouin can be stored in the memory device of Hardouin in the same way that the data is received and stored in Hahn to create the driving profile.

Regarding claim 26 Hardouin teaches a decision unit coupled to an operating panel of an operable device with at least two operating states that may be produced or changed independently from each other, which is used in a vehicle (see col. 1, lines 57-67 and col. 2, lines 11-15). Hardouin teaches the decision unit comprising an input for receiving signals from the at least sensor present in the vehicle (see col. 2, lines 10-15). Hardouin teaches a decision unit,

determining vehicle-specific conditions over a time period of vehicle operation by evaluating the received sensor data indicating an actual driving situation of the vehicle; and blocks or releases the existing operating states of the operable device according to whether an actual driving situation is dangerous or non-dangerous on a basis of the data; and outputting a signal, which is used for changing the operating states of the operable device connected to the decision unit (see col. 2, lines 11-15, 17-24, 29-32, actual speed being above or below predefined speed corresponds to actual driving situation being dangerous or non-dangerous respectively (see col. 1, lines 10-11)). Hardouin does not specifically teach converting the vehicle-specific conditions into a driving profile. Hahn teaches converting vehicle-specific conditions into a driving profile (see col. 5, lines 35-41, col. 6, lines 23-25 and col. 7, lines 55-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device in Hardouin adapt to include converting the vehicle-specific conditions into a driving profile as taught in Hahn because the received data in Hardouin can be stored in the memory device of Hardouin in the same way that the data is received and stored in Hahn to create the driving profile.

***Response to Arguments***

VII. Applicant's arguments with respect to claims 9-28 have been considered but are moot in view of the new ground(s) of rejection.

**VIII.** Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### *Conclusion*

**IX.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sato Patent Number: 5,953,677 discloses a mobile telephone apparatus with power saving.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON J. MILLER whose telephone number is (571)272-7869. The examiner can normally be reached on Mon.-Fri. 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Eng/  
Supervisory Patent Examiner, Art Unit 2617

October 23, 2008

/Brandon J Miller/  
Examiner, Art Unit 2617